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As a Continuity of the Different Forms of Violence: Gender-Based Digital Violence Against Women

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Abstract

The terms online or digital gender-based violence (GBV) and cyber violence against women (VAW) are generally used synonymously to address acts of online/technology-facilitated abuse against women and girls committed against them because of their gender. This paper evaluates that although online or digital dimension of VAW may not be stated and referenced in the international and regional legal frameworks, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Council of Europe Convention on the Preventing and Combatting Violence Against Women and Domestic Violence (the Istanbul Convention), it is interpreted as a form of discrimination against women aligning with the spirit of Articles 1 and 3 of the CEDAW and several articles of the Istanbul Convention can be applied to the specific topic of digital/online violence such as Article 33 (psychological violence), Article 34 (stalking), and Article 40 (sexual harassment). This paper is desk-based research paper which analyses the issue methodologically through the CEDAW and the Istanbul Convention and their recommendations which address digital dimension of VAW.

Keywords: gender-based violence, digital violence, online violence, the CEDAW, the Istanbul Convention

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Farklı Şiddet Biçimlerinin Bir Sürekliliği Olarak Kadına Yönelik Toplumsal Cinsiyet Temelli Dijital Şiddet

Özet

Çevrimiçi veya dijital toplumsal cinsiyete dayalı şiddet ve kadına yönelik siber şiddet terimleri, kadınlara ve kız çocuklarına karşı toplumsal cinsiyetleri nedeniyle işlenen çevrimiçi/teknoloji destekli istismar eylemlerini ele almak için genellikle eşanlamlı olarak kullanılmaktadır. Bu çalışma, kadına yönelik şiddetin çevrimiçi veya dijital boyutunun, Kadınlara Karşı Her Türlü Ayrımcılığın Önlenmesi Sözleşmesi (CEDAW) ve İstanbul Sözleşmesi gibi uluslararası ve bölgesel yasal çerçevelerde açıkça belirtilmemiş olmasına rağmen; CEDAW'ın 1. ve 3. maddelerinin kapsamına uygun olarak kadınlara karşı bir ayrımcılık biçimi olarak yorumlanmakta ve İstanbul Sözleşmesi'nin 33. maddesi (psikolojik şiddet), 34. maddesi (ısrarlı takip) ve 40. maddesi (cinsel taciz) gibi çeşitli maddeleri kapsamında dijital/çevrimiçi toplumsal cinsiyet temelli şiddet analiz edilmektedir. Bu çalışma, konuyu CEDAW ve İstanbul Sözleşmesi ve kadına yönelik şiddetin dijital boyutunu ele alan tavsiye kararları üzerinden metodolojik olarak analiz eden bir masa başı çalışmasıdır.

Anahtar Kelimeler: toplumsal cinsiyete dayalı şiddet, dijital şiddet, çevrimiçi şiddet, CEDAW, İstanbul Sözleşmesi



1. INTRODUCTION

Technologies are known as double-edged sword on violence against women (hereafter VAW). First, using technology is crucial on combatting VAW, for instance, women can demand their rights to live free from violence via social media platforms (Boethius et al., 2023). Social networks have permitted women to become a voice at an unprecedented scale and to build transnational impactful movements (Wilk, 2018). Second, technology can be also used to perpetrate VAW. By using technology, sexual, physical, and psychological violence taking place offline is spread and worsened. Gender stereotypes and online misogyny are also settled in the creation of these social platforms. Violations of women's and girls' human rights have become much more visible through the ever-rising rates of internet access globally and the wider use of digital technologies. Further, maximum impact for technology-facilitated violence and abuse is delivered through distinctive features of information communication technologies such as reach, portability and speed (Hall and Hearn, 2017).

Although VAW has been rooted in gender inequality in all societies and cultures across the world, it depends on the specific social, economic, cultural, and political context. Thereby, different, or new forms of VAW may arise when societies undergo political and economic changes, or cultural and social shifts. Emphasising Kelly's conceptualisation as a 'continuum of violence' (Kelly, 1988), digital or technology related violence is the continuity of the different forms of violence against women taking place offline (Wilk, 2021). Acts of violence against women and girls are committed through information and communication technologies (ICTs) and they have become a primary concern for individuals and communities. While digital/online violence or cyberviolence may be targeted at any individual or group and may involve a broad kind of acts, this paper focuses on women, who are often the victims of online violence. Acts of gender-based violence are committed by using technology such as social media platforms, phones, or the internet. This has a serious effect on women's lives, including psychological and physical health, their livelihoods, their physical safety, and their reputation (Group of Experts on Action against Violence against Women and Domestic Violence, General Recommendation No.1, 2021).

Recently, there is no international convention to define or regulate the phenomenon of gender-based digital dimension of violence against women. Although the United Nations recognizes online violence as a continuum of violence, international legal framework is not completely addressing this phenomenon. Therefore this paper evaluates that although online or digital dimension of VAW may not be stated and referenced in the international and regional legal frameworks, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Council of Europe Convention on the Preventing and Combatting Violence Against Women and Domestic Violence (the Istanbul Convention) (Council of Europe, 2011a), it is interpreted as a form of discrimination against women aligning with the spirit of Articles 1 and 3 of the CEDAW and several articles of the Istanbul Convention can be applied to the specific topic of digital/online violence such as Article 33 (psychological



violence), Article 34 (stalking), and Article 40 (sexual harassment). With General Recommendation No. 1 of the Istanbul Convention, the Committee introduced the definition of digital dimension VAW. There are other fundamental mechanisms to combat digital violence which are Council of Europe's Budapest Convention on Cybercrime and its additional protocols regulating cybercrimes (Council of Europe, 2001) and Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Council of Europe, 2010). However, these legal instruments are not addressed specifically digital dimension VAW and thus, this is the limitation of this research.

Online violence and abuse are prevalent and illustrated through surveys and reports across the world. For instance, European Union Agency for Fundamental Rights (FRA)'s survey of 28 European states on VAW revealed that 11% of women have received unwanted and sexually, and offensive explicit emails or SMS messages or inappropriate advances on social media platforms (European Union Agency for Fundamental Rights, 2014). Moreover, Pew Research Centre works on online harassment found that "21% of women ages 18 to 29 report being sexually harassed online, a figure that is more than double the share among men in the same age group (9%)" (Duggan, 2017, p.7). 38% of respondents who live in the UK experienced online abuse according to Glitch UK and End Violence Against Women Coalition (2020). According to KONDA Research and Consultancy, one in five people have been subjected to digital violence in Turkey (Sener and Abınık, 2021). While women have experienced digital violence because of their gender and physical appearance, men have faced to digital violence because of their political views (Sener and Abınık, 2021). 51% of women receive texts, voice, or video harassment messages in digital environments, and 46% are persistently face online stalking (Sener and Abınık, 2021). People are most exposed to digital violence by people they don't know and trolls. The platforms where acts of digital violence are most common are Instagram (53%), Facebook (35%) and Twitter (19%) (Sener and Abınık, 2021). Although this paper is desk-based research paper which analyses the issue methodologically through the CEDAW and the Istanbul Convention and their recommendations which address digital dimension of VAW, these reports and surveys indicate the prevalence and the importance of the digital dimension of violence against women throughout the world.

2. DEFINING DIGITAL DIMENSION OF VIOLENCE AGAINST WOMEN

As Harris (2020) evaluates violence is the root and effect of inequalities and social control, which evidences structurally and institutionally, offline, and online. These forces various forms of technologies. The use of technologies provides insight into how violence is enacted, fostered, and normalised (Harris, 2020). Digital or technology-facilitated VAW covers variety of very specific forms of violence that have an important impact on victims (Wilk, 2021). Most of them are existing crimes and offences but expanded via the internet and digital technologies (Wilk, 2021). Moreover, it comprises acts of gender based VAW aggravated, committed, in partly or fully, by the use of ICTs and includes:



amongst others, cyberstalking, bullying, threats, blackmail and sexual harassment; accessing or uploading/disseminating intimate photos, videos or audio clips without consent; accessing or disseminating private data without consent; uploading/disseminating altered photos or videos through dating, pornography or other kinds of websites; creating fake profiles and other forms of identity theft; mob attacks; grooming predation (of children in particular); doxxing (searching and publicising another's personal data) and exploitation of women and girls (Association for Progressive Communications, 2015).

According to United Nations Special Rapporteur on Violence against Women (UNSRW), Dubrovka Simonovic offered a broad definition of online or ICT-facilitated forms of violence:

The definition of online violence against women [...] extends to any act of gender-based violence against women that is committed, assisted, or aggravated in part or fully by the use of ICT, such as mobile phones and smartphones, the Internet, social media platforms or email, against a woman because she is a woman, or affects women disproportionately (United Nations Human Rights Council, 2018, p.23).

Yet, Simonovic stated that while the general term "information and communications technology" (ICT) is used in several official UN documents, "online violence", "digital violence" or "cyberviolence" are used interchangeably in other reports (United Nations Human Rights Council, 2018, p.15). Correspondingly, European Parliamentary Research Service's (2021) report used the expression 'gender-based cyberviolence', emphasising the gendered natured of cyber violence. The term 'cyber' is helpful to link the definition to cybercrimes, particularly to the Council of Europe Convention on Cybercrime (2001), also known as Budapest Convention.

Technology-facilitated violence and online abuse have carried out using technologies such as mobile devices or internet (European Institute for Gender Equality, 2020). Therefore, the phenomenon of digital VAW on social media platforms is called with different terms such as "cyber harassment, cyber violence, cyber bullying, cyber sexism" in the literature. Thereby, the terms are more commonly used interchangeably. I consider using the expression 'gender-based digital violence' by emphasizing that violence stems from gender-based discrimination.

3. ADDRESSING GENDER-BASED DIGITAL VIOLENCE IN THE CONTEXT OF THE CEDAW

Violence against women is a form of discrimination against women and human rights violation as recognised under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and other international and regional instruments. Although online or digital dimension of VAW may expressly not be stated in the CEDAW, but it is interpreted as a form of discrimination against women aligning with the spirit of Articles 1 and 3 of the CEDAW (Arimatsu, 2019). Article 1 of the CEDAW, 'discrimination against women' is defined as: "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women...on a basis of



equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". The broad definition used in Article 3 obliges States to "take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men". Reading these two articles together foresees the emergence of new forms of discrimination that may not have considered at the time of drafting of the CEDAW Convention (Arimatsu, 2019, p.199). Thus, discrimination against women in the digital space is one such example.

Moreover, CEDAW Committee's General Recommendation No. 35 (GR. No.35) on gender-based VAW, updating General Recommendation No. 19, being catalyst for this process recognised "the continuum multiple, interrelated, and recurring forms of gender-based VAW, in a range of settings, from private to public, including 'technology-mediated settings' (CEDAW Committee, 2017, p.6). The Committee further called States to take preventive measure to combat online VAW, including self-regulatory mechanisms created or strengthened by online and social media (CEDAW Committee, 2017, p.37(a)). Yet, CEDAW GR. No. 35 did not address in detail the gender-based nature of online abuse of women and its harmful effects and nor elaborated the obligations of State Parties in preventing and fighting against online VAW (Barker and Jurasz, 2019).

Further, pursuant to Article 1 of the Declaration on the Elimination of Violence against Women (DEVAW), the wording of 'any act of gender-based violence against women' can be extended to the definition of online violence "that is committed, assisted, or aggravated in part or fully by the use of ICT, such as mobile phones and smartphones, the Internet, social media platforms or email, against a woman because she is a woman, or affects women disproportionately" (United Nations Human Rights Council, 2018, p.22-23). As pointed out in the report that "women and girls across the world have increasingly voiced their concern at harmful, sexist, misogynistic and violent content and behaviour online' (UNHRC, 2018, p.14). Appropriately, Simonovic also noted on the States' failure to recognize VAW in digital sphere as a 'real' form of violence (United Nations Human Rights Council, 2018).

The terms online or digital gender-based violence (GBV) and cyber VAW are generally used synonymously to address acts of online/technology-facilitated abuse against women and girls committed against them because of their gender. However, Dorokhova et al. (2021, p.9) points out that cyber VAW compromises violence in the form of online harassment; online sexual harassment; online defamation; cyber stalking and surveillance/ tracking; hacking; impersonation; identity theft; image-based abuse; malicious distribution (including threats thereof); cyber bullying and many other forms of abuse. In case of domestic violence, for instance, "Trolling, verbal abuse, sextortion, non-consensual sharing of intimate images, the manipulation of photos, cyberstalking, doxing, hacking, damage to intellectual property, and distributed denial-of-service attacks (DDOS attacks) may occur exclusively online, they may



also occur in connection with offline events, and they almost always have repercussions that are experienced both on- and offline" (Ging and Siapera, 2018). Owing to the extensive range of the phenomena and the variety of categories, the Working Group of the Council of Europe (2018) reached consensus on using 'cyberviolence', defining as "cyberviolence is the use of computer systems to cause, facilitate, or threaten violence against individuals that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering and may include the exploitation of the individual's circumstances, characteristics or vulnerabilities" (Council of Europe, 2018, p.5)

This adaptation of the wording of 'cyber' is from the context of the definition of VAW of Article 3 of the Istanbul Convention to encompass all forms of violence. Correspondingly, Article 1 of the Inter-American Convention on the prevention, punishment, and eradication of violence against women (the Belém do Para Convention) provides a definition on VAW as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere". These definitions on VAW that are common in the context of the violence are not limited to physical harm. The Working Group of CoE acknowledges that using cyberviolence is rather broad and need to mature further (Council of Europe, 2018, p.5).

4. APPLICATION OF GENDER-BASED DIGITAL VIOLENCE FROM THE CONTEXT OF THE ISTANBUL CONVENTION

Although the Istanbul Convention does not contain an explicit reference to the digital dimension of VAW, several articles of the Convention can be applied to the specific topic of digital/online violence such as in Article 33 (psychological violence), Article 34 (stalking), and Article 40 (sexual harassment). Besides, its scope as outlined in Article 2 encompasses violence committed in the digital sphere, as this was intended by its drafters (Wilk, 2021, p.7). Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) which has been monitoring the implementation of the Convention by the State Parties since 2016, has gradually increased attention to the technology related VAW (GREVIO, 2021). It also noted the existence of the crime of revenge porn to prosecute sexual harassment committed on the Internet since 2016 (GREVIO, 2021). Recently, GREVIO published General Recommendation No.1 (GR No. 1) on the digital dimension of VAW in November 2021. The Istanbul Convention encompasses forms of digital dimension of violence against women in several articles that will be analysed in this section.

First, sexual harassment forms "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment" (Article 40 of the Istanbul Convention). This definition applies to online and technology-facilitated sexual harassment. This comes under GREVIO's GR No. 1 considering the behaviour online or through digital means to come under the definition of Article 40 of the



Convention, as follows: 1) non-consensual image or video sharing; 2) non-consensual taking, producing, or procuring of intimate images or videos; 3) exploitation, coercion, and threats 4) sexualised bullying: and 5) cyberflashing (GREVIO, 2021, p.38). These behaviours are also identified as sexist hate speech recognised by the Committee of Ministers Recommendation on preventing and combating sexism (Council of Europe, 2019). This recommendation points out that "these acts are often humiliating and contribute to a social climate where women are demeaned, their self-regard lowered and their activities and choices restricted, including at work, in the private, public or online sphere" (Council of Europe, 2019, p.4). As a sexist behaviour, for instance, sexist hate speech forming a first step of the physical violence, may escalate to or incite overtly offensive and threatening acts, including sexual abuse or violence, rape, or potentially lethal action (Council of Europe, 2019, p.4). Thus, sexist behaviour comes within the remit of Article 40 of the Convention.

Second, Article 34 of the Istanbul Convention also applies to online and technology-facilitated stalking. It defines stalking as "the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety". Council of Europe Explanatory Report to the Istanbul Convention (2011b, p.182) (hereafter Explanatory Report) extends the scope of Article 34 to the digital sphere, as the threatening behaviour consisting of repeatedly following another person physically or following the victim in the virtual world (chat rooms, social networking sites, etc.). In line with the Explanatory Report, GREVIO elucidates stalking practices perpetrated in the digital sphere including "monitoring and gathering of private information on the victim, solicitation for sex, identity theft, threats of economic, physical, psychological or sexual nature, impersonating the victim" (GREVIO, 2021, p.41).

Third, many forms of online and technology-facilitated violence can result serious psychological damages on women and girls. The Istanbul Convention requires to criminalise psychological violence pursuant to Article 33 that takes on significant meaning. Article 33 defines psychological violence as "the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats". Explanatory Report of the Istanbul Convention clarifies that Article 33 discusses to a course of conduct rather than a single event. It is intended to capture the criminal nature of an abusive pattern of behaviour occurring over time – within or outside the family (Council of Europe, 2011b, p.181). In the context of domestic violence, forms of psychological violence doubled with new technology take radical forms (GREVIO, 2021, p.43). For instance, perpetrators who are most commonly former or current intimate partners misuse victim's intimate images through physical devices (like phones, computer), platforms (such as Twitter, Instagram, YouTube), and virtual or electronic accounts (including social media profiles, online customer accounts, or email or employments accounts). Such practises of digital violence have harmful effects mentally and physically on women. Moreover, concerning psychological violence, Boukemidja (2018) states that verbal abuse can lead to various behavioural, emotional, and physical problems. Furthermore, online psychological violence can take the form of threat, coercing the victims or their family that can



lead incitement to suicide or self-harm (GREVIO, 2021, p.46). This is another rising phenomenon, "the impacts of which are intensified by the anonymity offered to perpetrators online, the longevity of content and the ease of bringing together a large number of perpetrators to commit a mass attack on the victim" (Wilk, 2021, p.36).

On the other hand, women who are multiple identities, such as journalists, bloggers, women's human rights defenders, women with disabilities, indigenous women, and women from marginalized groups and political parties are also targeted by digital violence (United Nations Human Rights Council, 2018). GREVIO also takes attention on the risk of intersecting forms of discrimination within digital forms of gender based VAW. Digital forms of gender-based VAW can be particularly pronounced for women and girls at risk of or exposed to intersecting forms of discrimination, and may be exacerbated by factors including migration status, sexual orientation, disability, religion, political affiliation, social origin, or celebrity status, among others" (GREVIO, 2021, p.12).

5. CONCLUSION

Digital technologies can bring enormous benefits that support the advancement of women and gender equality, by enabling women and girls to exercise their human rights. However, the misuse of these technologies might limit women's enjoyment of their human rights, and even worse, threaten their security.

The omnipresence of gender based digital violence against women urges an evaluation of domestic legal frameworks and security policies under its obligations of the CEDAW and the Istanbul Convention. State Parties have a due diligence obligation to prevent, protect and punish acts of VAW, including gender-based digital violence. Thus, the CEDAW Committee called State Parties that "online and social media should be encouraged to create or strengthen mechanisms focusing on the eradication of gender stereotypes, and to end any gender-based violence committed on their platforms" (CEDAW Committee, 2017, p.63). The Committee promotes these standards extensively in the digital space. Further, the GR No.1 of the Istanbul Convention also cope with the digital dimension of VAW. This is reflected as an important step to tackle with the gender based digital VAW.

On the other hand, the Istanbul Convention is criticised since it has not included digital dimension of VAW in its core text in 2012. Rather, it has brought into account this issue through its GR No. 1. However, the Recommendation shows how the gender based digital VAW is taken seriously within the concept of the Istanbul Convention in specific and the mainstream understanding of VAW in general from the international human rights law. With GR No. 1, the Committee introduced the definition of digital dimension VAW and offered a guidance for application of some forms of VAW of the Istanbul Convention, such as cyberviolence, online harassment or cyberstalking. On the other hand, both recommendations of the CEDAW and the Istanbul Convention are soft law mechanisms which mean not legally binding. This paper



contributes to the literature since there is no effective international legal framework to specifically define and regulate gender-based digital dimension of VAW.

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